

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MICHAEL HIGGINS,)	
)	
Appellant,)	DOCKET NO.: PT-2002-3
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on November 26, 2002 in the City of Anaconda, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

Mr. Higgins, the Taxpayer, represented by his attorney, Bernard (Ben) Everett, provided through testimony and exhibits in support of the appeal. The Department of Revenue (DOR), represented by Debbie Jurcich, Region 5 West Unit Manager, and Julie Goebel, residential appraiser, presented evidence through testimony and exhibits in opposition to the appeal.

The Taxpayer is the appellant in this proceeding and, therefore, has the burden of proof. Testimony was presented and exhibits were received in evidence. The duty of this Board is to determine the appropriate market value of the property based on a preponderance of the evidence. Based on the evidence, the Board

finds that the decision of the Department of Revenue and the Anaconda-Deer Lodge Tax Appeal Board shall be modified.

STATEMENT OF THE ISSUE

The issue before this Board is the market value of the subject property.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.
2. The subject property is described as follows on the DOR Residential/Agricultural Property Record Card:

Lot 7A, Block 5, Certificate of Survey 260A, Section 3, Township 4 North, Range 11 West, City of Anaconda, County of Deer Lodge, State of Montana, and the improvements located thereon. (Assessor Code 0000541600)
3. For the 2002 tax year, the DOR valued the subject land at a value of \$14,163 and the improvements thereon at \$84,790.
4. Mr. Higgins filed a timely appeal with the county tax appeal board on June 28, 2002, requesting a value of \$10,951 for the land and \$58,780 for the improvements.
5. In its September 17, 2002 decision, the county tax appeal board denied the appeal, stating,

Disapproved because the land is appraised in accordance to (sic) other land in the area. The buildings are assessed in comparison to other properties in the area.

TAXPAYER'S CONTENTIONS

The Taxpayer requested a land value of \$10,951 or \$.77 per square foot. The Taxpayer researched five properties with a price per square foot on the land of \$.05 to \$.82. He testified that these values were not derived from sales, but rather are the established values of the DOR.

Mr. Higgins testified he built his house with scrap materials (including salvaged items such as doors) on a concrete slab foundation. The construction type was described as "pole" with salvaged steel poles imbedded in the concrete slab and the outside walls constructed and attached to those poles. The outside walls, again, were made at least for the most part from scrap lumber salvaged from a building that Mr. Higgins was hired to demolish.

The house is within a few hundred feet of a garbage transfer station where there is more or less continuous noise from diesel trucks loading garbage from the city for transportation out of town. The Taxpayer finally contends all of the so-called comparable properties suggested by the DOR are not comparable to his house. One of the DOR's comparables has been for sale for over a year and is currently being rented. The remaining comparables are located too far from the subject.

DOR CONTENTIONS

Exhibit B illustrates the three land sales that the DOR testified were used to establish land value for the subject property. Exhibit B illustrates the following:

Sale #	Sale Date	Sale Price	Sq. Ft.	Price per Sq. Ft.	Lot Width	Lot Depth	Sale Price per FF
Sale 1	9/7/94	\$4,500	4,900	\$0.92	35	140	\$128.57
Sale 2	6/5/95	\$3,000	3,500	\$0.86	25	140	\$120.00
Sale 3	8/1/95	\$5,300	3,500	\$1.51	50	70	\$106.00
Subject			14,163	\$1.00			

It is the opinion of the DOR that, based on these three land sales, \$1.00 per square foot for the subject property is warranted.

The DOR established value indications for the residence by the sales comparison approach and the cost approach. The DOR testified that it relied on the cost approach as the final indicator of value because the sales comparison approach produced an unsupportable value. Exhibit E illustrates the three improved sales that were selected by the Computer Assisted Mass Appraisal System (CAMAS). Because of the vast differences between the computer selected comparables and the subject property, the indicator "****NC****" appears at the bottom of the exhibit. This indicator tells the appraiser that the properties selected are "not comparable." The DOR concedes that its offered comparables were not within its computer's range of viability and it, therefore, resorted to the cost approach to value the improvements. The DOR's cost approach value for the improvements is \$84,790. A summary of the DOR's property record card, Exhibit D, illustrates the following:

Exterior Walls	Stucco
Style	Conventional
Foundation	Slab
Basement	None
Heating/Cooling	Non-Central
Heating Fuel Type	Electric
Heating System Type	Elec. Base/Rad
Year Built	1985
Physical Condition	Average

Quality Grade	Average
Condition,	Average
Desirability & Utility	Asphalt & Concrete Paving
Other Improvements	Covered Patio

The DOR also conceded that its computer assisted construction description had no category for "pole" construction or for construction from scrap materials for depreciation purposes. It is the opinion of the DOR that the cost approach has adequately established the market value for the subject improvements.

BOARD DISCUSSION

The Taxpayer requested that this Board reduce the value of the land from \$1.00 per square foot (\$14,164/14,163 SF) to \$.77 per square foot (\$10,951/14,163 SF). Mr. Higgins offered no evidence supporting his assertion that his land should be valued at \$10,951 and, indeed, upon questioning by this Board, stated that it was just his opinion. In addition, Mr. Higgins presented land values from neighboring property. The Montana Supreme Court held in State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931), that; "in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."

Accordingly, this Board has no evidence before it to overcome the DOR's assertion as to comparable vacant land sales and must

accept the DOR's land value of \$14,163. The Board, therefore, adopts that value.

The improvements are another matter, however. The DOR determined the quality grade of construction as "average." Based on the Taxpayer's testimony of the physical characteristics of the property, the structure better reflects one of fair quality as defined in the DOR's appraisal manual.¹

The DOR's property record card reflects a condition, desirability and utility (CDU) of "average." The CDU is one factor used by the DOR to establish overall depreciation. There are three components to establishing overall depreciation, physical, functional and economic. According to International Association of Assessing Officers:

Economic obsolescence is the impairment of desirability or useful life arising from economic forces, such as changes in highest and best use and legislative enactments that restrict or impair property rights and changes in supply-demand relationships. It is sometimes referred to as locational obsolescence. Since this type of accrued depreciation is seldom if ever curable, it is generally classified as incurable. Some examples of economic obsolescence are encroachment of inharmonious land uses, location of obnoxious commercial or industrial businesses in a residential neighborhood, narrow streets with poor traffic access, and lack of adequate parking in a retail business district.²

It is the opinion of the Board that the garbage transferring activity occurring adjacent to the subject warrants a reduction from an "average" rating to a "fair" rating.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.

1 The Montana Appraisal Manual, 42.2.4, 11/1/96, p. 42.9

2 International Association of Assessing Officers., *Property Assessment Valuation*, Chicago, Ill., 1977, p. 160

§15-2-301, MCA .

2. §15-8-111, MCA. **Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. §15-2-301, MCA. **Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. **ARM 42.18.121 Revaluation Manuals**
5. State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931)
6. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. Western Airlines, Inc., v. Catherine Michunovich et al, 149 Mont. 347, 428 P.2d 3, (1967).
7. The appeal of the Taxpayer is hereby granted in part and denied in part and the decision of the DOR and the Anaconda Deer Lodge Tax Appeal Board is modified

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall remain on the tax

rolls of Anaconda-Deer Lodge County at the 2002 tax year value of \$14,163 for the land, as determined by the Department of Revenue and affirmed by the County Board, and at the improvement value reflective of the assignment of a "fair" CDU and a quality grade of 4 (fair).

Dated this 9th day of January, 2003.

BY ORDER OF THE
STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

JERE ANN NELSON, Member

MICHAEL J. MULRONEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of January, 2003, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Michael Higgins
100 West Pennsylvania Street
Deer Lodge, Montana 59711

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Anaconda-Deer Lodge County Appraisal Office
County Courthouse
Deer Lodge, Montana 59711

Glen Kenison
Chairman
Anaconda-Deer Lodge County Tax Appeal Board
223 Rumsey
Anaconda, Montana 59711

DONNA EUBANK
Paralegal